

REMARKS

Applicants appreciate the Examiner's thorough consideration provided the present application. Claims 1-10 are present in the application. Claims 1 and 6 are independent. By this Amendment, no claims have been amended. Reconsideration of this application, as amended, is respectfully requested.

Incomplete and Premature Final Office Action

The outstanding Office Action, dated August 28, 2007 fails to treat claims 6-10, which were properly added in an Amendment under 37 CFR §1.111, filed on April 20, 2007. Because of this, the Office Action is incomplete and either has to be withdrawn or supplemented by an Office Action that restarts the time to reply thereto and which treats claims 6-10 on their merits. Moreover, because claims 6-10 have not been treated on their merits, the outstanding Office Action should not have been made final. **Accordingly, the finality of the outstanding Office Action should also be withdrawn.**

Examiner Tang and Applicants' representative discussed this issue on March 5, 2008 by telephone, and Examiner Tang indicated that he would address this issue after this Amendment is filed.

Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1-3 and 5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Whitmarsh et al., U.S. Patent No. 7,042,585. Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Whitmarsh et al. in view of Nakajima, U.S. Application Publication No. 2002/0107817. These rejections are respectfully traversed.

It is noted that the present application claims priority to EPO Application No. 00203538.4, which was filed on October 13, 2000. A certified copy of the European priority

application was submitted to the U.S. Patent Office on October 12, 2001, and the Examiner has acknowledged receipt of the certified copy of the priority document in the Office Actions dated March 14, 2005 and September 30, 2005. In the Office Action dated September 28, 2007, the Examiner indicates that "None" of the certified copies have been received; however, it is believed that this indication has been provided by the Examiner in error. Since the certified copy of the priority application was in the English language, Applicants respectfully submit that the filing date of the present application has been perfected to October 13, 2000, which is only three days after the effective filing date of the Whitmarsh et al. reference of October 10, 2000.

Attached hereto for the Examiner's consideration is a Declaration under 37 C.F.R. § 1.131. This Declaration provides evidence that the presently claimed invention was invented prior to October 10, 2000 and Applicants diligently filed EPO Application No. 00203538.4 on October 13, 2000. In view of this, the Whitmarsh et al. reference is not available as a reference under 35 U.S.C. § 102(e), and cannot be relied upon under 35 U.S.C. § 103(a).

In view of the above remarks, Applicants respectfully submit that claims 1-5 clearly define the present invention over the references relied on by the Examiner. Reconsideration and withdrawal of the Examiner's rejections under 35 U.S.C. §§ 102 and 103 are therefore respectfully requested.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

Application No.: 09/974,911
Amendment dated May 28, 2008
Reply to Office Action of August 28, 2007

Docket No.: 0142-0362P

Page 4 of 4

In the event there are any matters remaining in this application, the Examiner is invited to contact Paul C. Lewis, Reg. No. 43,368, at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: May 28, 2008

Respectfully submitted,

By 

Paul C. Lewis

Registration No.: 43,368

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Rd.

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant